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Freedom of speech: A case of social media in Kuwait- Comparing the scope of freedom of expression in the Kuwaiti and the british courts

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Abstract
The relationship between media freedom and the individual right to free speech is a complex and nuanced one, such that the former should not simply be conflated with the latter. A number of high profile cases have demonstrated that expressing opinion on social media can be subject to criminal prosecution. Before shedding the light on the Kuwaiti courts' approach to penalizing political opinions published on twitter and comparing the Kuwaiti court decisions to British court decisions in similar cases, this paper will begin with understanding the concept of liberty, the difference between liberty and human rights, the source of liberty and the danger of using the harm principle, the caretaker and the utopia principles to issue laws which may appear ostensibly to protect people but curtail the important freedom of expression instead.

Keywords: freedom of expression, freedom of speech, social media, liberty, Kuwait, Britain, harm principle, caretaker principle, utopia principle, constitution, defamation

Introduction

All over the world today, both in developing and developed states, liberal democracies and less free societies, there are groups who struggle to gain full access to freedom of expression for a wide range of reasons including poverty, discrimination and cultural pressures. While attention is often, rightly, focused on the damaging impact discrimination or poverty can have on people's lives, the impact of blocked or limited freedom of expression is rarely addressed.

Individuals and groups in some countries face greater barriers to free expression than other countries. Such individuals and societies can often be denied an equal voice, and active and meaningful participation in political processes and wider society. Discrimination, legal barriers, cultural restrictions, religious customs and other barriers can directly or indirectly block the voices of the already marginalized. Such barriers and lack of access to freedom of expression matter because access to freedom of expression is important. Freedom of expression is a fundamental human right. It also underpins most other rights and allows them to flourish, the right to speak one's mind freely on important issues in society, access information and hold the power to be included and heard, plays a vital role in the healthy development process of any society.

This article explores the scope of freedom of speech in Kuwait and compares it to Britain with a special emphasis on the role of social media. In the small developing state of Kuwait where recurring political disputes between government and Parliament continues to paralyze political institutions, spread corruption, postpone crucial development projects, and accelerate the deterioration of public goods and services, the freedom for people to voice their frustration has also been restricted. The Kuwaiti government has repeatedly used force and violence against those who are seeking political, social and economic reform and has made it clear that Kuwait will remain an ostensibly democratic free country to the world, while many groups of opposition within the state are kept silent through prosecution, jail sentences and deportation threats.

The rise of the Kuwaiti opposition which has sparkedthe issue of freedom of speech especially through the new technology of social media can be considered a new phenomenon inspired by the events of the Arab Spring, therefore, not much material has been written analyzing the situation in Kuwait; this has been a challenge when collecting data for this article. So much of the data collection relied on articles in newspapers and court cases published online. This can also constitute a limitation to this article as not much data is available around the subject.

The subject of free speech in Britain, however, has been raised and discussed frequently. In his book *A Right to Offend: Free Expression in the Twenty-first Century*, Winston (2012) focuses on the concept of free speech in the Western world during the past two decades and offers a deeper understanding of the increasingly threatening environment in which free speech operates. This book focuses only on the concept of free speech in the Western world therefore does not touch on other countries of the East. In his book *Feel Free to Say it: Threats to*

Freedom of Speech in Britain Today, Johnston (2013) puts the current limitations of free speech in Britain in historical context, proving that there are more people being jailed and arrested today on the grounds of free speech than any time since 18th century Britain. Johnston's work, however, focuses only on Britain and does not offer comparative study. The collection of essays in *Fallout: Free Speech and the Economic Crisis*, SAGE (2013) provides a new take on how the economic crisis has posed new threats and restriction on the issue of free speech especially on reporting and demonstrations, however, this work concentrates on Europe and the United States.

The objective of this article is to shed some light on the under-reported, under-represented cases of free speech cases taking place in Kuwait and provide a comparative study between Kuwait and Britain to create a level of understanding of the scope of free speech in both countries.

What is Liberty?

Liberty is power, not in any metaphorical sense, but literally, that liberty is power, agency, room to spread one's arms. Or as Thomas Jefferson put it: „Rightful liberty is unobstructed action according to our will within limits drawn around us by the equal rights of others". In a word, power (Head, 2009: 1). There are liberties we all agree should not be restricted, such as the liberty to air opinions publically on policy issues, or the liberty to read whatever we want, we refer to these basic liberties as civil liberties, the liberties to which we believe every person is entitled (Head, 2009: 1).

According to Mill (1991: 1-9), liberty is protection against the tyranny of the political rulers. The time, however, came, in the progress of human affairs, when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interest to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. In that way alone, it seemed, could they have complete security, that the powers of the government would never be abused to their advantage. This is when the ideas of self-government and popular government began to rise and take form (Mill, 1991: 1-9).

Two ideas of liberty: Freedom from and freedom to

In 1958, political historian Isaiah Berlin identified two distinct and sometimes competing ideas of liberty: negative liberty (or „freedom from") and positive liberty (or „freedom to"). Negative liberty is freedom from government coercion, while positive liberty is the freedom to make livable decisions.

A nation cannot operate on the principle of pure negative liberty because without nondiscrimination laws, corporations are free to organize society into castes. Without anti-trust laws, monopolies are free to achieve oppressive powers, without workers" rights laws, individuals who lack social power can be reduced to slavery and without social welfare programs, social mobility becomes impossible. However, a nation only dedicated to positive liberty with no concept of negative liberty would result in a „nanny state" in which the government claims the power to ensure quality and happiness in every citizen's life.

What is the difference between civil liberty and human rights?

Many do not think that the concept of civil liberties and the concept of human rights are necessarily distinct, but they are. Civil liberties are only concerned with the freedom to act in way which liberty can be repressed. Human rights, on the other hand, go beyond that scope of ending poverty, homelessness and disease. Also, because of the larger breadth of human rights and its inclusion of civil liberties, certain small violations of civil liberties do not constitute violations of the bigger larger in scope human rights. For example, when an employer makes an employee redundant due to posting inappropriate pictures on the internet, this may be considered as a breach of civil liberty, but would not attract the attention of the UN committee on human rights. And finally, in terms of methods to implement, when it comes to civil liberties there is a need to think globally but act locally, there is a tendency for every society to push for its own local views of what constitutes liberty and acts against what it counts as a breach of them, thus this will differ from one society to another. When it comes to human rights, there is an international consensus that no one should die from starvation or of epidemic, thus, human rights issues are raised globallyand worked for globally as well (Sandel, 1998: 113) [4].

The source of liberty

God

The framers of the eighteenth-century enlightenment would claim that our rights come from God. In the US Declaration of Independence from Great Britain (1776), for example, Thomas Jefferson referred to natural rights as being „endowed by (mankind's) creator", however, there are several problems with this line of reasoning: Governments that protect liberties in the name of God can do other things in the name of God, too. If there is one thing the horrors of Taliban-led Afghanistan have taught us, it is that a dangerous precedent is set when leaders believe they are in a position to receive special instructions from God (Locke, 2003: 58).

In the increasingly secular and religiously diverse nations of the west, concepts of liberty based on theology are losing their persuasive value, however they never had much persuasive value to people who do not share the speaker's theology. The question whether civil liberties come from God or nature boil down essentially to one question: Are civil liberties facts or values?

Facts and values

If liberties are facts, then they can be proven, asserted and demonstrated to any tyrant on the earth. They are fundamental, unchanging and immensely powerful. They apply anywhere and everywhere just as the laws of physics apply anywhere and everywhere. If liberties are facts then anyone who does not respect them, denies reality (Schumpeter, 2013: 211).

If liberties are values, then it will become almost impossible to prove that they are worth honoring, and thus someone who chooses not to recognize civil liberties does not have to, and any tyrant can dismiss liberties by simple disagreement. That is because values are entirely subjective. In order to share the same values, people need to first share similar sentiments. Arguments about how people should be treated, if they are based on values will fall apart when confronted with someone who does not care about the people in question (Rawls, 1999: 123).

Liberties must be valued and provable

The reason civil liberties must be valid and provable, is that most politicians are duplicitous, power-hungry, self-promotional individuals. When politicians are offered power by the people, they will accept it and will most likely hold on to this power. This is why it is important that civil liberties be valid, so we do not have to rely on politicians‟ own discretion to allow us and deprive us from our liberties (Fried, 2005).

We might say that if we buy something, we have the right to keep it, but if we steal something then we do not have that right. We might also tell a friend who is angry when bullied by his employer that he has every right to be angry. Why do we have the right to keep something we paid for but have no right to keep it if it was stolen? Why does our friend who was bullied by an employer have the right to be angry? Because these are values which were inculturated in us, we believe that these rights are associated with a meaningful life and are based on a moral foundation which we consider basic to who we are. Liberties and our chosen concepts of rights are based primarily on the habit we have learned to have empathy with, and to be concerned about strangers. However, we must remember not to be complacent because our rights and liberties can only exist if we continue to believe that they do (Head, 2009: 1).

The three theories upon which laws can be based

Every law, every restriction on personal liberty, tends to be grounded on one or more of three basic principles. First, the harm principle, as the most basic purpose of law is to protect people from each other as laws against murder, rape, burglary do. But even the harm principle can be used to justify excessively restrictive law, given a sufficiently broad definition of harm. A law against hurting the feelings of others, for example, could be legitimately defended on the basis of the harm principle. The harm principle protects people from actual and potential harm, thus driving under the influence of alcohol is punished due to the danger this behavior may inflict on other people (Dickson, 2001: 17).

Secondly, the caretaker principle depends on the belief that governments have an obligation to protect people from harm not directly inflicted on them by others. This kind of protection was extended to orphans and widows who were perceived as individuals who have no means to provide for themselves. Today, social policies guarantee food, shelter, and education to the less privileged. In many societies, the caretaker policies tend to restrict the use and distribution of alcohol, drugs, tobacco and other substances government might think citizens might use to harm themselves; these regulations can narrow the liberties and provide an institutionalized nanny attitude where citizens are cared for like children (Dworkin, 1978: 89).

Thirdly, some policies of the utopian principle are not about direct harm at all, they are about protecting the law makers‟ vision of how society should function. Laws restricting display of contempt towards ruler, flags, policies or other national symbols are often proposed based on the law makers‟ utopian principle that everyone should behave in a patriotic way, at least in public. Laws restricting criticism of religion or religious symbols or practices are proposed to ensure citizens adherence and respect for that religion in alignment to utopian belief of the greatness of god and religion. The reason why this principle is dangerously ambiguous is that it is based on an emotional argument of what society should be like and behave rather than the natural development of progression of social ideals and values (Rawls, 1999: 22-23).

Criminalizing theft, murder and rape under the harm principle is crucial but it is abuse of power when governments begin using the caretaker or utopian principle claiming people’s protection from potential or even questionable danger, especially when the restriction of certain activity or speech is mainly to protect government sovereignty and not the people.

Limiting the freedom of speech in Kuwait

In 2011 and in the heat of the Tunisian, Libyan and Egyptian upraise, Kuwait was also going through a political upheaval; corruption involving the Prime Minister’s abuse of public funds had spread in all the daily newspapers and people took their anger to the streets demanding his resignation (Sabar News, Online Daily Newspaper, 20/May 2011). The situation developed and worsened when the ruler of Kuwait *Shaikh Sabah Al Ahmed Al Sabah*, declared that the PM will continue to hold his post and will succeed him. People’s frustration grew and they took to twitter to share and air their feelings of discontent and rebellion.

Although ostensibly a democracy, in the sense that there exists a constitution, a Parliament and elections which cannot always be described as totally free or totally transparent, in Kuwait, there are still countless red lines that cannot be crossed or tempered with when it comes to criticizing the ruler and the government, especially when the concept of ruler and government entwine and become hard to distinguish, therefore creating blurry red lines in many cases.

In Kuwait, government officials and Ministers (many of which are members of the ruling family) are appointed not elected by the Prime Minister who is a member of the ruling family and who is appointed by the Amir, therefore the distribution of authority only further enforces the authoritarian rule of a single ruler. In a political system such as the one in Kuwait, power-sharing among those already in power lead to durable ruling coalitions (North and Weingast, 1989). As Article 4 of the Kuwaiti constitution provides, "*Kuwait is a hereditary Amirate held in succession in the descendants of Mubarak AlSabah* (Article 4 of Kuwait's Constitution 1962)". Article 54 of the constitution states: "*The Amir is the Head of State. His person is safeguarded and inviolable* (Article 54 of Kuwait's Constitution 1962)", and in the public right section of the constitution is a list of civil liberties including: "*Personal Liberty is guaranteed* (Article 30 of Kuwait's Constitution 1962)", "*freedom of belief is unrestricted…* (Article 35 of Kuwait's Constitution 1962)", "*Freedom of opinion is guaranteed…* (Article 36 of Kuwait's Constitution 1962)", "*Freedom of the press and the publication is guaranteed…* (Article 37 of Kuwait's Constitution 1962)".

In September 2012, Fatima Al Matar, the author of this paper, a public law lecturer at Kuwait University, was arrested and prosecuted, after a tweet that went viral in late 2011 blaming the Amir and the Prime Minister for all the corruption that was spreading. Some who thought themselves liberal or democratic were shocked by the forwardness of the tweet, but for the majority who are traditional and religious in their thinking, the tweet was received as defaming, offensive, vulgar, and even blasphemous; this stems from a deeply rooted Islamic tradition and ideology that obeying and being respectful towards the ruler is an extension of your duty towards God. The Qur‟an states:

"*O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result (59)*".

The District Attorney who was investigating Fatima's tweet, which she tweeted while still a PhD student in the UK, concluded that she had committed two criminal offences, according to Kuwait's criminal Law No. 31/1970: the first was an offence according to Article 15 which has been continuously used against twitter users as a response to publishing (outside the Kuwaiti jurisdiction) rumors about the political, economic, social or financial situation in Kuwait undermining the democratic order inside the state and causing a spark and upheaval on a national level; these charges were also raised against individuals who criticized neighboring monarchs. Article 15 of the Kuwaiti Criminal Law 31/1970 states:

"Shall be punished by imprisonment for a term not exceeding three years any national or expatriate living in Kuwait, any person who willingly publishes outside the state of Kuwait news, information, statistics or rumors about the political, economic, financial or social situation with the intention of eroding the state's status and prominence in ways that result in offending the state's interest (Article No. 15 of Kuwait's Criminal Law No. 31/1970)*."*

The second offence Fatima was charged with was according to article 25 of the Kuwaiti criminal Law 31/1971:

"*Shall be punished by imprisonment for a term not exceeding five years, any person who appeals in public or in a public place, or in a place where it can be heard or seen publically, by saying or shouting or writing or drawing or picturing or any other means of thought expression, the rights and authority of the Prince, or reproach the Prince person or violate the princedom attribute* (Article No. 25 of Kuwait's Criminal Law No. 31/1970)."

Fatima's attorney, Professor Ibrahim AlHumood (a practicing Kuwaiti Lawyer and a Professor of public law at Kuwait University), argued to the court that the tweets took place whilst his client was abroad (the UK) therefore was not within the jurisdiction of Kuwaiti courts, in addition to this, AlHumood challenged the application of Articles 15 and 25 of the Kuwaiti criminal law to his client's tweets and called the court to observe that the tweets did not contain what can be interpreted as spreading political rumors with the intention of eroding the country's prominence, nor were the tweets defaming the ruler as the ruler himself has - on many occasions - publicly condemned the corruption that affects the country's development.

On May 5th 2013, the Kuwaiti court of first instance found Fatima not guilty in accordance with the first offence of publishing rumors outside Kuwait with the intention of eroding the state's status and prominence. However, Fatima was charged with the second offence, that is, reproaching the Prince's person or violating the princedom attribute, according to article 25 of the Kuwaiti criminal law 31/1970. The court had convicted the defendant with that offence while withholding penal action (suspended sentence) in accordance to article 81 of Kuwait's penal law which allows the court to withhold punishment if the defendant's circumstances, age, past, current job and social situation leads the court to believe that the defendant will not repeat the offence. The sentence was affirmed by the higher court of appeal (http://www.kuwait.tt/articledetails.aspx?Id=282721).

Fatima's case was not an unusual one; in May 2010, Muhammad Abd Alqader Aljasem, a Kuwaiti writer and lawyer, was charged due to his online published criticism about the governance system (http://archive.arabic.cnn.com/2010/middle_east/6/4/kuw ait.blogger_prisoner/). He was imprisoned for these

charges and also for criticizing the Prime Minster, which the court considered an insult and defamation under the Kuwaiti criminal law according to articles 15 and 25 of the Kuwaiti criminal law 31/1970 mentioned above. Aljasem was pardoned by the Amir on February 10th 2011 (http://www.alqabas.com.kw/node/549347), which also marked the end of the Egyptian revolution. Many speculated that the decision of pardoning Aljasem was a political strategy to avert the people's anger that had resulted due to the arbitrary measures in Kuwait (Alzubairi *et al*., 2011).

The young Kuwaiti teacher Sara Alderess (http://alziadiq8.com/33260.html), a strong supporter of the Kuwaiti opposition, was arrested and convicted of violating the limits of the narrow freedom of expression in Kuwait, when she tweetedher opinion that was considered an insult to the Amir's authority, and a reproach to the Prince person and a violation to the princedom attribute, according to Article 25 of the Kuwaiti criminal law no. 31/1970. She was found guilty in May 2013 and sentenced to a year and eight months in prison; the higher court of appeal affirmed the ruling in July 2013. As Sara was sent to prison and began immediately the execution of her sentence, the Holy month of Ramadan was observed by the people of Kuwait; a time of worship, mercy and deep spiritual reflection. The call for pardoning the young lady teacher grew louder until on the 5th of August when the Amir pardoned her and ordered her release (http://alwatan.kuwait.tt/articledetails.aspx?Id=295801). In December 2010, Special Forces security officers Informal political gathering was being held in a privatehouse in Kuwait, injuring four MPs who were amongst the guest speakers, a university law professor, and a journalist. The purpose of the informal gathering was to discuss a constitutional issue related to parliamentary practice. An Interior Ministry spokesperson said that the gathering violated the 1979 Public Meetings and Assembly Law, in which any gathering of more than 20 people must have a police permit in advance (http://www.hrw.org/news/2010/12/10/kuwait-permit-peaceful-political). The law professor from Kuwait University, Dr. Obaid Alwasmi, challenged the officers claiming that their measures were illegal. He was arrested and charged with offences against the state's security, one was disrespecting the forces based on the criminal code, and another one was violating the Law regarding Public Meetings and Assembly. Dr. Alwasmi, however, was pardoned before the beginning of his trial upon the Amir's wishes in February 10, 2011 (http://alwatan.kuwait.tt/articledetails.aspx?Id=295801).

Legal basis for free speech in the UK

In an open, democratic society, free speech is essential. The press, the broadcast media and political opponents must have the freedom to criticize those in power. It is one of the ways that people in such a society hold their leaders accountable and expresses their individuality as free citizens. No matter how vulgar, profane or distasteful a particular form of expression may be, a person has the right to advance it (and others have the right to express their reaction to it). Many UK organizations such as Liberty are vigilant about defending that principle. They side with people who take very unpopular views - although in defense of the right to hold and express such views rather than in defense of the views themselves.

Although free speech has long been recognized as a common law right in Britain, it also has a statutory basis in Article 10 of the European Convention on Human Rights (the "Convention"), which has been incorporated into UK law by the Human Rights Act 1998. In fact, Article of the Convention goes beyond free "speech" and guarantees freedom of "expression", which includes not only the spoken word, but written material, images and other published or broadcast material (http://www.echr.coe.int/Documents/Convention_ENG.pdf).

Article 10 (Article 10 of the European Convention on Human Rights "the convention") provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Article 10 of the European Convention on Human Rights "the convention").

The type of expression protected includes:

- Political expression (including comments on matters of general public interest);
- Artistic expression;
- Commercial expression, particularly when it also raises matters of legitimate public debate and concern (http://global.asc.upenn.edu/fileLibrary/PDFs/CaseLawArt 10.pdf).

For obvious reasons, political expression is given particular precedence and protection. Artistic expression - vital for fostering individual fulfillment and the development of ideas - is also robustly protected. To ensure that free expression and debate is possible, there must be protection for elements of a free press, including protection of journalistic sources. The right to free expression would be meaningless if it only protects certain types of

expression, therefore, subject to certain limitations the right will protect both popular and unpopular expression, including speech that might shock others.

Limitations of Article 10

Article 10 is a qualified right and as such the right to freedom of expression may be limited. Article 10 provides that the exercise of this freedom "since it carries with it duties and responsibilities" may be limited as long as the limitation: is prescribed by law, is necessary and proportionate, and pursues a legitimate aim, namely:

1. The interests of national security, territorial integrity or public safety;
2. The prevention of disorder or crime;
3. The protection of health or morals;
4. The protection of the reputation or rights of others;
5. Preventing the disclosure of information received in confidence; or
6. Maintaining the authority and impartiality of the judiciary (http://global.asc.upenn.edu/fileLibrary/PDFs/CaseLawArt 10.pdf).

Case Studies of UK'S limits on freedom of speech

What is defamation?

Defamation is the publication, declaration or broadcast of material that is capable of lowering a person or a company in the estimation of others. The common law definition of defamation includes holding someone up to hatred, ridicule or contempt, or causing others to shun or avoid a person. It disparages them in their business, trade or profession. Defamatory material may be communicated by any means (for example, newspaper, magazine, radio, television, or e-mail) as long as the message is seen or heard by the subject of the defamatory comment and at least one other person (apart from the person making the statement) (Baker, 2011: 11).

UK defamation Act 1996 and the amendments of 2013

The UK Defamation Act 1996 exists to protect the reputation and good standing of an individual. The Act creates a defense of „innocent dissemination" which states that those who are not the author, editor or publisher of a comment and have no reason to believe they are contributing to the defamation of another, will have a complete defense against being sued for defamation (Ghattaura, 2013).

The 2013 Defamation Act is the most recent update to the UK"s defamation law and aims to reform the 1996 act, to ensure that a fair balance is struck between the right to the freedom of expression and the protection of reputation. Before the royal assent of the Defamation Act 2013 in April, the law was governed mainly by the Defamation Acts of 1952 and 1996. This Act makes a number of substantive changes to the law of defamation, but is not designed to codify the law into a single statute (BBC, Defamation Act 2013).

The new amendments made to the UK defamation law are seen as an improvement, allowing more scope for freedom of speech in the sense that the claimant must prove to the court that he has suffered or is likely to suffer serious harm as a result of the comments, restricting the scope of potential claims. This will inevitably lead to fewer cases being brought to courts as it would be more difficult to prove this. Also, the introduction of the „one year" rule means that there will be fewer cases brought forward. In addition to this, claimants will need to be shrewd about which claim they bring forward, under the limit of one year. The positive effect of this change is that the Act has been updated to suit online behavior. Under the old law, a new actionable claim could be opened for every time the same defamatory comment was republished, which could lead to a long set of cases that would be time-consuming for the court and the claimant. And finally, the new law prevents claims which do not have much relation to the UK from being settled here, unless the claimant can prove that the UK is the best forum to settle the case (BBC, Defamation Act 2013). This third improvement is especially important now that much information is published online. There is a „publication" of information in almost every legal jurisdiction and so a case could theoretically be brought anywhere in the world. The previous law had been much criticized for making London into a „libel tourism" destination – Boris Berezovsky sued Forbes for defamation in the UK in 2000 despite only 1% of its readership being there. If one country's libel laws allow cases to be brought more easily than elsewhere, it can attract cases which are not really relevant to that jurisdiction (Love, 2014).

Sally Bercow, the wife of the Commons Speaker John Bercow tweeted two days after BBC Newsnight wrongly linked a "leading Conservative politician" to sex abuse claims. Amid widespread speculation about his identity, Sally tweeted: "Why is Lord McAlpine trending *innocent face*" (http://www.bbc.co.uk/news/world-22652083).

Britain"s most senior libel judge, Mr Justice Tugendhat, ruled that the tweet was seriously defamatory of McAlpine and had falsely tarred him as a pedophile. He said in his judgment: "I find that the tweet meant, in its natural and ordinary defamatory meaning, that the claimant was a pedophile who was guilty of sexually abusing boys living in care. If I were wrong about that, I would find that the tweet bore an innuendo meaning to the same effect."

Judge Tugendhat explained that there was no sensible reason for Bercow to include the words *innocent face* in her tweet, which sensible readers among her 56,000 followers would have understood to be "insincere and ironical". He decided that her tweet "provided the last piece in the jigsaw" and allowed readers to wrongly link McAlpine with the allegation of child sexual abuse.

Bercow's barrister, William McCormick QC argued at an earlier hearing that Twitter was simply a place where people share "random thoughts without necessarily meaning anything". However, the judge found that her followers would mostly be interested in politics and current affairs, so will have known McAlpine as a leading politician in the 1970s and 1980s. After the ruling by Mr Justice Tugendhat in Lord McAlpine's favor, Mrs. Bercow said she had accepted a settlement with the peer's lawyers. The amount of damages has not been disclosed (http://www.theguardian.com/politics/2013/may/24/sally-bercow-).

Should politicians have thicker skin?

The idea of insulting or criticizing politicians is especially
tedious simply due to the nature of their occupation which makes them more vulnerable to scrutiny and exposed to criticism and judgment. Protecting freedom of speech is considered important as it allows people to criticize those they think are wrong and that is important for democracy; otherwise nobody could criticize the government or politicians and convince others that their policies are misguided or that they are unfit to govern. In an Austrian case which took place in 1986 (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i= 001-), Mr. Lingens, an Austrian journalist and editor of the magazine Profile, published an article that accused Mr. Bruno Kreisky, the Austrian Chancellor and President of the Austrian Socialist Party, of not only having an accommodating attitude towards former Nazis, but also for his public support of Mr. Friedrich Peter, the President of the Austrian Liberal Party, who has served during WWII in a unit that had on several occasions massacred civilians behind the German lines in Russia. Although the Vienna Regional Court found Mr. Lingens guilty of defamation, the Vienna Court of Appeal had a different opinion:

"…In the case of politicians, this was public opinion. Yet experience showed that frequent use of insults in political discussion (often under cover of parliamentary immunity) had given the impression that statements in this field could not be judged by the same criteria as those relating to private life. Politicians should therefore show greater tolerance. As a general rule, criticisms uttered in political controversy did not affect a person"s reputation unless they touched on his private life. That did not apply in the instant case to the expressions „minimum requirement of political ethics" and monstrosity."

According to the Vienna Court of Appeal, "freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders." In this context:

"the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-)".

As freedom of speech narrows and public security measures heighten, should we rethink everything we tweet?

A high court ruling overturned the conviction of Paul Chambers, who was found guilty of sending a menacing tweet. Twenty-seven year old Chambers, a trainee accountant, said he was "relieved and vindicated", adding: "It is ridiculous that it ever got so far." He had always maintained that he did not believe anyone would take his "silly joke" seriously. In January 2010, he had tweeted in frustration when he discovered that his local airport in Doncaster was closed by snow. Eager to see his girlfriend, he sent out a tweet declaring: "Crap! Robin Hood airport is closed. You have got a week and a bit to get your shit together otherwise I am blowing the airport sky high!!"

Chambers was arrested by South Yorkshire police and convicted by district judge Jonathan Bennett sitting at Doncaster magistrates court and fined £1,000. He was prosecuted under section 127(1) of the Communications Act 2003, which prohibits sending "by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character" (http://www.theguardian.com/law/2012/jul/27/twitter-joke-victory-free-).

In November 2010, crown court judge Jacqueline Davies, sitting with two magistrates, dismissed his appeal, saying that the electronic communication was "clearly menacing" and that airport staff were sufficiently concerned to report it.

The lord chief justice, sitting with Mr Justice Owen and Mr Justice Griffith Williams, said airport staff did not believe the message was a credible threat. Allowing Chambers‟ appeal, they commented: "We have concluded that, on an objective assessment, the decision of the crown court that this tweet constituted or included a message of a menacing character was not open to it. On this basis, the appeal against conviction must be allowed."

During the appeal, John Cooper QC, who represented Chambers, had said: "If that be the case, and I don‟t mean to be flippant, John Betjeman would be concerned when he said „Come, friendly bombs, and fall on Slough‟, or Shakespeare when he said Let's kill all the lawyers (http://www.theguardian.com/law/2012/jul/27/twitter-joke-victory-free-)".

Conclusion

Freedom of expression is essential for democracy to work effectively. Citizens cannot exercise their right to vote or take part in public decision-making if they do not have free access to information and ideas, and are not able to express their views freely. New opportunities are emerging for greater freedom of expression with the internet worldwide, and new threats are emerging too. If governments can curtail freedom of expression on the basis of

the harm principle, caretaker principle or utopian principle, then defamation and libel laws and civil liberties conventions with arbitrary limits will become governments‟ way to practice more control on the people rather than ensure people's freedom and natural civil rights.

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